



City of Albuquerque

Legislative File Number AC-06-2 (version 1)

INTER-OFFICE MEMORANDUM

January 3, 2006

TO: Martin Heinrich, President, City Council

FROM: Richard Dineen, Planning Director
AC-06-2 - 05DRB-01550, 05DRB-01551, Project #1003747 - Marcia Swezy, Agent for Mary Lou Kraft, et al, appeals the decision of the Development Review Board (DRB) for final sign-off of a Site Development Plan for Subdivision and a Site Development Plan for Building Permit for all or a portion of Tract(s) 1, 4 & 5, Wyoming Mall (to be known as Walmart), zoned C-2, (SC), located on the east side of Wyoming Blvd NE, between Menaul Blvd NE and Northeastern St NE, containing approximately 30 acre(s). Sheran Matson, DRB Chair. (J-14)

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BACKGROUND: On April 21, 2005, the Environmental Planning Commission (EPC) approved the Site Development Plans for Subdivision and Building Permit for the Walmart to be located at the site of the Wyoming Mall. The sole function of the Development Review Board (DRB) in this matter was to ensure that the conditions imposed by EPC on the site plans were met and that the EPC approved site plans were not altered prior to submission to DRB except to meet the EPC conditions.

The EPC Case Planner for this Walmart project is the same Planning staff person

who reviewed this DRB submittal for compliance with EPC conditions and unauthorized changes. After some revisions to the site plans by the agent, the EPC Case Planner did initial and approve the two plans signifying that all EPC conditions were met and there were no unauthorized changes.

RESPONSES TO APPELLANTS' REASONS FOR APPEAL:

1. The DRB failed to comply with (EPC)Condition 1, site development plans for subdivision and building permit.

DRB did comply with these conditions by ensuring all EPC conditions were met and other applicable City requirements were met. The appellants do not specify how the DRB failed to comply with Condition 1, except to enumerate certain conditions below.

2. The DRB failed to comply with Conditions 3a, b, c and e for the site plan for subdivision and Condition(s) 22a, b, c and e of the site plan for building permit.

It is not DRB's role to comply with EPC conditions, but rather the project agent & applicant's role. DRB's role is to ensure compliance. Since the Appellants are not specific as to how the conditions were not met, it is not possible to reply specifically to this allegation. The referenced conditions in the appeal refer specifically to transportation improvements, which will be financially guarantee until construction begins and the improvements are completed. The EPC Case Planner as well as the Traffic Engineer signified these conditions are part of the approved site plan(s).

3. Again, Appellant alleges DRB did not comply with certain EPC conditions.

Since the Appellants are not specific as to how the conditions were not met, it is not possible to reply specifically to this allegation.

1st #4. The DRB ...failed to notify all parties to the final sign-off proceedings/actions of its final decision but did so in a...less than timely manner. Appellant did not receive an Official Notice of Decision even though she established herself as a party to the proceedings by providing two written submittals with concerns about the submittal and DRB related actions.

DRB's final sign offs on EPC approved site plans are noticed through posting its agendas outside the DRB hearing room at least 72 hours before the public meeting date and also through posting agendas on the City's website, again at least 72 hours before the public meeting date. The DRB adhered to both of these notice requirements.

The DRB Notice of Decision is mailed to everyone who appears at the DRB public meeting and signs in with the DRB Administrative Assistant. The Appellant did not appear in person at the DRB public meetings where this project was heard. The Appellant was provided with an electronic, unsigned copy upon request and was later given a signed copy of the Notice of Decision from the file.

2nd #4. The DRB exceeded its authority by determining at a hearing that a cell tower on the site plan was approved by the EPC simply because it's proposed location was indicated on the site plan.

The EPC did approve the relocation site of the cell tower as shown on the site plan that the EPC approved. Actual construction of the cell tower will require additional EPC approval of another site plan for building permit, just as Condition 15 in the EPC Notice of Decision on this site plan for building permit states.

5. The DRB exceeded its authority by determining that...outdoor storage or activity, seasonal sales"...as shown on the site plan was approved by EPC because its location was shown. Outdoor storage or activity is a conditional use in the C-2 zone. Conditional uses are approved by the Zoning Hearing Examiner. Neither EPC nor DRB have the authority to grant a conditional use. A use for seasonal sales was clearly not before the EPC as it made no Findings of Fact or Conditions of Approval regarding seasonal sales.

The term "seasonal sales" is not the same as outdoor storage or activity. Outdoor sale of flowers and plants is the intended meaning of "seasonal sales" for the Walmart site plans. Outdoor sale of flowers and plants is a permissive use in C-2 zoning. The EPC considers all aspects and uses which are depicted on a site development plan, but each item is not necessarily mentioned in its Findings or Conditions (as in this case).

7. (There is no #6.) The DRB may have exceeded its authority by amending the site development plan(s) to include conditions of the private agreement

(between Walmart and the Inez Neighborhood Association). The DRB is not described in Section 14-16-3-11 of the Zoning Code as part of the process in making amendments to site plans.

The City is not a party to the private agreement between Walmart and the affected neighborhood associations. As such, DRB cannot enforce or oversee the implementation of the agreement terms. Further, DRB did not amend the site plans to include conditions of the private agreement. The Appellants do not describe specifically how the DRB amended the site plans to include these conditions.

The removal of the tire & lube facility and the downsizing of the seasonal sales areas were two of the major components of the private agreement. These two changes are proposed to occur through administrative amendments now that the site plans have received DRB approval.

Appellant is requesting the Land Use Hearing Officer to :

- 1. Determine the DRB failed to comply with EPC conditions of approval.**
- 2. Determine the DRB erred in its decision:**
 - In applying adopted city plans, policies and ordinances in arriving at the decision;**
 - In the appealed action or decision, including its stated facts; and**
 - In acting arbitrarily or capriciously or manifestly abusive discretion.**
- 3. Determine that unauthorized changes to this site plan, including before or after final sign-off, promoted by the applicant and supported by the DRB shall result in forfeiture of approvals.**

The Appellants failed to show that DRB erred in its decisions in any of the three criteria outlined in #2 above or acted arbitrarily, capriciously or was manifestly abusive of its discretion. DRB did not make or knowingly approve unauthorized changes to the site plans.

In response, the DRB considered the conditions of approval by EPC, and has indicated the site plans comply with these conditions by signing off the site plans.

APPROVED:

Jack Cloud, Interim Manager
Development Review Division
Planning Department

x:share/council/appeals/2006/ac-06-2